

January 8, 1975

PRESIDENT: Is, is the committee willing to accept that, somebody want to speak to that suggestion. Anybody object. Anyone on the committee object to Senator Cavanaugh's observation and supplement to your report? Senator Lewis. Richard Lewis.

SENATOR R. LEWIS: Well Mr. President and members of the Legislature I would like to know exactly what obligation we are assuming. Would you care to have the Clerk read that again, or would you allow the Clerk to read that again Senator Cavanaugh.

SENATOR CAVANAUGH: Let me read the section of the statute, Senator Lewis and then reading that in conjunction with the report of the Credentials Committee I think that we will be in a position to appreciate what we are doing.

SENATOR R. LEWIS: Yes sir.

PRESIDENT: Go ahead Senator Cavanaugh.

SENATOR CAVANAUGH: 32.point -- 32-1001.22 is entitled Contest of Elections, All Contests, Possession of Office During Contests, Surrender of Office to Successful Party, and it reads in every case of a pending contested election the person holding the certificate of election may give bond qualify and take the office at the time specified by law, and exercise the duties thereof until the contest shall be decided. If the contest be decided against him, the court or other tribunal, which in this case would be the Legislature, deciding the same shall make an order for him to give up the office to the successful party in the contest, and deliver to him all books, records, papers, property and affects pertaining to the office and may enforce such order by attachment or other proper, proper legal process. Now my recommendation is that the report of the Credentials Committee regarding the 48th -- the seating of the certified duly elected individual from the 48th district make -- include in the motion to this body the notation that the representative from the 48th district is seated subject to the determination and outcome of the contest as provided in 32-1001.22.

PRESIDENT: Does that help Senator Lewis?

SENATOR R. LEWIS: No sir. If it's provided for by statute, why does this committee make any determination on it?

SENATOR CAVANAUGH: I think it is a procedural matter, Senator Lewis, for our own protection in creating a valid record here in the case of any further review of our action that it creates a clarified situation that the Legislature took cognizance of the situation at the initial time of the seating. I think it's for our own protection.

PRESIDENT: Standby. Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, maybe I could ask Senator Cavanaugh a question that would clarify it. Is there not at least a significant possibility that if we accept the report in its original form it might be interpreted as having ruled on the entire question and not -- having acted on that section of the statute already and might invalidate or render impossible any later procedures. And is it not necessary therefore to have this addendum to the report to protect and ensure that the statute is able to be utilized as it was intended.

SENATOR CAVANAUGH: Well, Senator DeCamp, as I understand the situation that we are confronted with, both of the